

1 Lisa M. Golden, Esq. (LMG 2148)  
2 GOLDEN HIRSCHHORN LLP  
3 1050 Franklin Avenue, Ste. 108  
4 Garden City, New York 85251  
5 Tel: (516) 307-1616  
6 [lmg@ghlawny.com](mailto:lmg@ghlawny.com)  
7 *Attorneys for Peter J. Cappiello, Sr*  
8 *And Ann Cappiello*

6 Tyler Q. Swensen, Esq.  
7 Dennis I. Wilenchik, Esq.  
8 The Wilenchik & Bartness Building  
9 2810 N. 3<sup>rd</sup> Street  
10 Phoenix, Arizona 85004  
11 Tel: (602)606-2810  
12 [TylerS@wb-law.com](mailto:TylerS@wb-law.com)  
13 *Attorney for JV Wholesalers, LLC*

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

Case No. 2:22-cv-00143-PHX-DJH

14 BHPH Capital, LLC., a Delaware limited  
15 liability company,

16 Plaintiff,

17 v.

18 JV Wholesalers, LLC, a New Jersey  
19 limited liability company dba Century  
20 Motor Cars; Victor C. Breen and Tara  
21 Breen, husband and wife; James M.  
22 Lithgow, Jr. and Jane Doe Lithgow,  
23 husband and wife; Peter J. Cappiello Sr.  
24 and Ann Cappiello, husband and wife;  
25 ABC Corporations, 1-10; DEF  
26 Partnerships, 1-10; GHI Limited Liability  
27 Partnerships, 1-10; John Does, 1-10; and  
28 Jane Does, 1-10,

Defendants.

**MOTION TO DISMISS**  
**(WITH PREJUDICE)**

25 Defendants JV Wholesalers, LLC, Peter J. Cappiello, and Ann Cappiello, by and through  
26 their respective, undersigned counsel and pursuant to Rule 41(b), FRCP, move the Court for an  
27 order dismissing this action based on Plaintiff's failure to comply with the Court's Order dated  
28 March 4, 2024, (Doc. 91), requiring Plaintiff "retain substitute counsel and ... file a Notice of

1 **Appearance**” by said substitute counsel “**on or before April 5, 2024**[.]” (Emphasis in original.).  
2 The Court’s efforts to reach BHPH and its principal, Daniel Serpe, since the Order (Doc. 91) was  
3 issued were both returned as “unable to forward.” (Docs. 92 and 93). Likewise, all efforts by  
4 undersigned counsel to contact or communicate with BHPH have been unsuccessful. Plaintiff’s  
5 conduct indicates that it has abandoned this action and will not take any further action to prosecute  
6 it. Therefore, the Court should dismiss it with prejudice.

7 This motion is being served on Plaintiff and all other parties or their attorneys. The last  
8 known addresses (for both email and U.S. Mail) for BHPH are as follows:

9 BHPH  
10 c/o Daniel Serpe  
11 4850 W. Glendale Ave.  
12 Glendale, AZ 85301

13 13634 S. Canyon Dr.  
14 Phoenix, AZ 85048

15 [Serpe8858@gmail.com](mailto:Serpe8858@gmail.com)  
16 [don@bhphcap.com](mailto:don@bhphcap.com)

17 RESPECTFULLY SUBMITTED this 26 day of April, 2024.

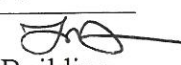
18 GOLDEN HIRSCHHORN LLP

19 By: 

20 Lisa M. Golden, Esq.  
21 1050 Franklin Avenue, Ste. 108  
22 Garden City, New York 85251  
23 Attorneys for Peter J. Cappiello Sr.  
24 And Ann Cappiello

25 WILENCHIK & BARTNESS, P.C.

26 By: 

27 Tyler Q. Swensen, Esq.   
28 The Wilenchik & Bartness Building  
2810 N. 3<sup>rd</sup> Street  
Phoenix, Arizona 85004  
Attorneys for JV Wholesalers, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that April 26, 2024, I transmitted the attached document:

Via U.S. Mail to:

Victor C. Breen and Tara Breen  
398 Main Street  
West Creek, NJ 08092  
*Defendants Pro Per*

James M. Lithgow Jr.  
10908 Tarflower Dr.  
Venice, FL 34293  
*Defendant Pro Per*

Via U.S. Mail and Email to:

BHPH  
c/o Daniel Serpe  
4850 W. Glendale Ave.  
Glendale, AZ 85301

BHPH  
c/o Daniel Serpe  
13634 S. Canyon Dr.  
Phoenix, AZ 85048  
[Serpe8858@gmail.com](mailto:Serpe8858@gmail.com)  
[don@bhphcap.com](mailto:don@bhphcap.com)

/s/ Heidi Wellbrock